

## **Archerfield Partners LLP—Written evidence**

### **Introduction**

1. We put forward this evidence to the Joint Committee on Privacy and Injunctions (“the Committee”). The need for us to do so arises from the publication of “supplementary written evidence” from Mark Burby, dated 23 January 2012 (the “Supplemental Submission”) and the identification of ourselves (as the lawyers to whom Mr Burby refers) in a Daily Telegraph article which repeated some of his false claims. We have been permitted to make a submission after the Committee had ceased taking evidence limited to a “reply to the points made by Mark Burby in his supplementary written evidence” only.

2. Mr Burby is and was the Third Defendant in legal proceedings in which we act for the Claimant. Since his Supplemental Submission was published, the court has given its judgment after the trial of the issues on liability against him (the “Judgment”). The Judgment is publicly available, including on the BAILII web site at <http://www.bailii.org/ew/cases/EWHC/QB/2012/496.html>. It sets out the court’s findings against Mr Burby in the action. It is readily apparent from the Judgment that the Supplemental Submission is highly misleading.

3. We wish to make clear at the outset that Mr Burby’s Supplemental Submission makes a series of false and damaging allegations about the conduct of our client and this firm, including an absurd allegation that we have acted together in a criminal conspiracy. All his criticisms are denied. In addition, Mr Burby has materially misled the Committee, both as to the facts of the case and as to the nature and effect of the interim injunction made against him by the courts. Mr Burby has harassed our client further by publishing his allegations through the Committee’s proceedings and undermined the protection which the court has legitimately (and rightly) granted her. In short, Mr Burby has deliberately attempted to engineer a way around the injunction properly granted by the court. It is highly regrettable that Mr Burby has sought and obtained publicity for his allegations under cover of parliamentary privilege.

4. There has been a good deal of public debate about the law of privacy and the grant of injunctions by the court. In this case, our client legitimately sought the court’s protection from a man who had published her private information, and threatened to publish more, and had set out to harass her in order to gain financial advantage for himself (in common parlance ‘blackmail’). There was no “public interest” or other justification for his conduct. The court has found (rightly) that Mr Burby infringed our client’s rights and that she is entitled to protection from him. The attack Mr Burby makes in his Supplemental Submission on the court’s process – like his attack on our client – is unwarranted.

### **Background: the legal action**

5. Mr Burby is the Third Defendant in legal proceedings in which we act for the claimant. His Supplemental Submission referred at length and in detail to those proceedings. The case is entitled WXY v (1) Gewanter (2) Positive Profile (3) Mark Burby. The fact that Mr Burby’s Supplemental Submission refers to this case has been mentioned in open court (1 March 2012).

6. So far as this case is concerned, it is important to note:

(1) There is a court order that our client, the claimant, should not be named or otherwise identified in relation to the proceedings: she is to be referred to as “WXY”;

(2) Since 9 September 2009, an interim injunction has been in place against Mr Burby, as well as the other Defendants. In brief summary, its effect is to prevent him from publishing or disclosing confidential information, identified in a “confidential schedule” to the order; from communicating to WXY any threat to make any such publication/disclosure or any request for money or other benefit in return for not doing so; and from otherwise harassing WXY.

(3) Trial of the action against Mr Burby took place in July 2011. He had the opportunity to put evidence and arguments before the court: he chose not to do so. The trial took place in private, which was necessary (as the court found) in view of the subject-matter of the action and the relief claimed.

(4) On 6 March 2012, the trial judge, the Honourable Mrs Justice Slade, delivered a public judgment setting out her findings after trial. The Judgment is now a matter of public record. Mr Burby was found to have harassed WXY and to have published her private information (and threatened to publish more) in an attempt to obtain a financial advantage for himself. The judge held that WXY was entitled to judgment against Mr Burby and to a “final” injunction against him.

(5) The interim injunction has been continued pending a further hearing, when the precise terms of the order against Mr Burby, including the final injunction, can be considered.

(6) Trial against the other two Defendants is due to take place later this year: the interim injunctions continue in force against them. We make no reference to those Defendants or the issues in the case against them. The judge found that it was possible to determine all the issues against Mr Burby in a separate trial (Judgment of 13 July 2011). We have been careful to ensure that this document contains nothing that could prejudice the further trial.

7. The material terms of the injunction, as ordered by way of interim injunction against all three Defendants, are contained in an Annex to this response. The contents of the Annex are identical to the document put before the court on 6 March 2012, which is to form the Annex to the formal public order. A copy of the order, when drawn up and sealed, can be provided to the Committee.

8. The Judgment explains the background circumstances which led WXY to conclude that it was necessary to take legal action against Mr Burby. In short, Mr Burby had begun to publish information that was private and confidential to WXY and had threatened to publish more; his allegations included many inaccurate allegations; he was seeking to harass WXY into paying him (or arranging for him to be paid) a large sum of money. WXY brought proceedings; sought an order protecting her anonymity in relation to them; and asked for interim injunctions. The court acknowledged that she was entitled to such orders.

9. The rights and wrongs of those orders were a matter for the court. The proceedings were active and ongoing at all material times, from their inception onwards. WXY pursued this matter to trial. The court has carefully considered what orders were appropriate at

each stage of the proceedings. Mr Burby has grossly misrepresented the proceedings, for example, by claiming that he was the subject of a “superinjunction”: he was not. There was never any “superinjunction” in this case against Mr Burby or any other Defendant: see the Judgment at [6]. Mr Burby was free, at all times, to tell anyone he chose that he was subject to an injunction. What he was not free to do was identify WXY, disclose her confidential information, communicate threats to her, or otherwise harass her.

10. The deliberately false picture Mr Burby gives of the proceedings goes far beyond the “superinjunction” claim. The Committee might have been led to believe that he was the victim of injustice in these proceedings: there is no foundation for any such claim. To be clear:

(1) Mr Burby’s claim that the interim injunction should not have been granted is wrong. The interim relief was carefully considered by a number of different judges: we refer to 14.2 below.

(2) Mr Burby’s claim that he was prevented from running his defence is wrong: he had every opportunity to present his case, in accordance with the law and rules of court. He did not even participate in the trial hearing.

(3) Mr Burby now claims that he has been prevented from exposing wrongdoing: this is untrue. His “public interest” defence advanced in the case was confined (by him) to two allegations only; each of these has been considered in full by the court and rejected: see 14.5–14.8 below.

### **Mr Burby’s first submission to the Committee: December 2011**

11. Mr Burby submitted “written evidence” to the Committee in December 2011 (the “First Submission”). The First Submission made a series of general points relating to matters in which the Committee was interested. It did not disclose that Mr Burby was involved in these proceedings. He referred to “parliamentary privilege” at the outset of that submission, noting at [2] that this would be “of particular importance if I (or someone I knew) were the subject of a super-injunction...” (emphasis added); he said that he did not want the Committee to take any view about any particular case, least of all one that was, or could be considered to be “sub judice” [7]; he was concerned, he said, with matters of “general importance”, referring to “general principles and practice” and how they “may relate to particular situations” [8]. We do not consider that it is necessary for us to make any comment or response in relation to what he says about such matters.

### **Mr Burby’s Supplemental Submission**

12. Mr Burby’s Supplemental Submission to the Committee is dated 23 January 2012. It moves from the hypothetical in his first submission (his “if” he were subject to an injunction) to the revelation that he was and is subject to an injunction. It referred in detail to the court proceedings against him and it was obvious that the injunction to which he was subject related to private information. The Supplemental Submission contained a mass of detail and a series of allegations (including grave allegations) about a number of individuals. Some of the matters set out were self-evidently highly confidential (even if there had been no reference to any injunction). It was apparent, in our view, that the matter was ongoing: there are

numerous references to that effect, not least that he had “current” solicitors and counsel [27] and the proceedings, running since 2009, had not concluded [penultimate paragraph]. There were hints, to put it at its lowest, that Mr Burby was seeking to suggest that the injunction had only limited effect against him, since he was resident in Jersey: see [13], [30], [31].

### **The contents of the Supplemental Submission**

13. Mr Burby’s Supplemental Submission grossly misrepresents the proceedings taken against him and the nature and effect of the injunction. It makes false and unfounded allegations about our client, our firm and others. There is an inherent injustice and unfairness in their publication under cover of parliamentary privilege. We do not intend to deal with every point Mr Burby makes which calls out for correction: this would require a disproportionately long response from us, which cannot be prepared without further intrusion into our client’s privacy. This would add substantially to the damage she has suffered and would play into Mr Burby’s hands if she were to be drawn into public debate about private matters. So far as Mr Burby’s conduct towards our client and his infringement of her rights is concerned, the Judgment now deals with these matters and sets out findings which the Committee is invited to read. If the Committee had been led to believe that Mr Burby was the victim of an injustice, the Judgment lifts the scales from their eyes. The only victim in these matters is our client at the hands of Mr Burby’s harassment.

14. We cannot leave the Supplemental Submission entirely without comment or response. We limit ourselves to the points below, but must emphasise that these are examples only of what is a grossly distorted and inaccurate document. References are to paragraphs of the Supplemental Submission:

#### **(1) Paragraph [3]**

14.1 Mr Burby was not bound by a “superinjunction”; there never was any “superinjunction” in this case: see the Judgment at [6]. The Report of the Committee on Superinjunctions, chaired by the Master of the Rolls (Lord Neuberger), published in May 2011, gave a clear and definitive definition of “superinjunction”: an essential element of a “superinjunction” is that it prevents the person subject to it from informing anyone else about the existence of the order and the proceedings. That was never the position in this case. Mr Burby falsely claimed to be subject to a “superinjunction” in order to attract attention and publicity.

#### **(2) Paragraphs [5-10]**

14.2 Mr Burby misrepresents the position in relation to the interim injunction (which was not a “superinjunction” as we show above). Although originally granted without notice, the interim injunction was considered on five separate occasions by a number of High Court judges. These hearings included a fully argued “return date” in October 2009, where Sharp J affirmed the terms of the injunction; and a fully-fledged application by Mr Burby (represented by counsel) to discharge the injunction, including on the (alleged but false) ground that there had been material non-disclosure when the interim injunction was first granted. Gray J refused this application. Amendments were made to the injunction, where appropriate: paragraphs 7A-7D were added (see the Annex). Mr Burby suggests that the

injunction was “questionable”, but it is not: he repeatedly questioned it in court, but to no avail.

14.3 In fact, there was no good ground for challenging the interim injunction or its terms. It is important to note that Mr Burby had the benefit of legal advice and representation from an array of lawyers at various times in the litigation, including: the solicitors Mark Stephens at Finers Stephens Innocent and Donal Blaney of Griffin Law; the barristers William McCormick QC of Ely Place Chambers and Patrick Green QC and Matthew Richardson, both of Henderson Chambers; and a Jersey Advocate, Andrew Begg. The injunction was rightly granted and Mr Burby knows it. The same applies to the service of proceedings on him in Jersey: this was considered by the court and the decision could not be faulted. Mr Burby is a party to the English proceedings not only because there are English-domiciled Defendants, but because Mr Burby has published and threatened to publish our client’s private information here in order to harass her.

14.4 Mr Burby claims at [10(c)] that “harass” is a legal term that is “...abused in such proceedings to imply unsavoury conduct on my part and is a very misleading reference indeed”. There is no doubt that Mr Burby’s conduct amounted to harassment of our client: we refer to the Judgment (generally). The Judgment makes clear specifically that Mr Burby “must have known that his actions amounted to harassment of the Claimant” [118].

(3) Paragraphs [14] and [19]

14.5 All of the allegations set out by Mr Burby in these paragraphs, including the “terrorism” allegation, come from a single source, M, whom the trial judge found to be unreliable and to have had a financial motive for making false allegations: Judgment at [96]. The trial judge dealt with the “terrorism” allegation specifically at [96]: she accepted the evidence of WXY that she had never discussed any such matters with M; and found that Mr Burby should have had doubts about the reliability of the ‘information’ M was providing. The fact that Mr Burby did not report this claim immediately to the relevant authorities shows that he must have thought that there was nothing in it: see 14.17 below.

(4) Paragraph [15]

14.6 Mr Burby suggests that there is a public interest justification for publishing an allegation that WXY had perjured herself: she had, he claims, lied when she denied having had a sexual relationship with a man (not her “ex husband”). This is a travesty of the truth.

14.7 Mr Burby had threatened to publish an allegation that WXY had had a sexual relationship with a man (we refer to him as “M”, as he is in the Judgment) and had perjured herself when she later denied it. Yet when it came to putting in his Defence in the action, Mr Burby did not contend that this allegation was true. In fact, Mr Burby by his counsel Mr Patrick Green confirmed to the court that there was no positive case upon the pleadings that the sexual relationship existed or that the Claimant had committed perjury. In July 2011 (six months before the Supplemental Submission), Mr Burby’s counsel, Mr Green confirmed to the Court of Appeal that Mr Burby did not advance any “positive case” that the alleged sexual relationship had existed or that WXY had committed perjury; Mr Green’s acceptance that responsible counsel cannot plead a positive case “without evidence for it” was noted by the Court of Appeal: see the Judgment at [9]. In fact, there was no sexual relationship between WXY and M; there was no perjury. The allegation Mr Burby threatened to publish was false. WXY gave evidence about this allegation at trial, which was

accepted by the judge. The Committee has been seriously misled. His claim that “...both she and her solicitors are aware that a relationship did take place and/or was sexual nature [sic]” is deliberately dishonest.

14.8 Mr Burby’s statement that “my position is that the Claimant...has perjured herself” is false and he knows it. This was not his position. The false claim that our client and “her solicitors are aware” that there was a sexual relationship is dishonestly made by Mr Burby. Again, the Committee has been seriously misled.

(5) Paragraphs [16], [21] and [22]

14.9 Mr Burby grossly mis-states both the relevant law and the facts. The elements of the cause of action in “privacy” are well-established and well-known. The questions are whether there is a reasonable expectation of privacy in relation to the information in question and, if so, whether the outcome of the “balancing test” is in favour of protection of privacy or not. Where information falls within the private sphere, there is no requirement that a claimant must identify which allegations are true and which untrue: it would be invidious to require them to do so. In any event, as is clear from 14.7 above: WXY had made clear that the allegation of perjury, and of the sexual relationship with M, was false and unfounded.

(6) Paragraph [17]

14.10 Mr Burby suggests that the matters to which he referred here should not have been covered by the injunction. Yet he did not discharge the relevant part of the interim injunction and Slade J held that the claim in confidentiality was made out: Judgment [79-88]. He did not contend at trial that this matter was the subject of a “public interest” defence: the Judgment at [62-63] identifies the two allegations which were claimed to be in the public interest to publish; the judge rejected that defence for the reasons given at [93-96]. Contrary to Mr Burby’s contention, the court found that the Claimant never agreed to secure payment of the ‘debt’, and moreover, that his lawyer at the time acknowledged that no such assurances had been given (see Judgment at [99]). There was nothing in these points.

(7) Paragraph [18]

14.11 Again, Mr Burby did not discharge the part of the injunction relevant to the matters discussed here. Slade J held that the claim in confidentiality was made out: Judgment [91-92] and there was no public interest defence in respect of these matters.

(8) Paragraph [23]

14.12 Mr Burby’s claim that his Article 6 rights were infringed is nonsense. It was necessary, as the court found, to sit in private for the trial: Judgment [4]. This was carefully considered by the judge and was not challenged by Mr Burby. As the Judgment shows, Mr Burby chose not to attend trial to present evidence or his case: he attended only to seek to adjourn the trial: Judgment [7-15]. This is hardly the conduct of a man who is faced with an unwarranted claim to which he has a good defence. The suggestion that there were “witness statements and evidence” to support the claims made in [23] is inaccurate and grossly unfair. Mr Burby adduced no evidence at trial. Much of the “evidence” listed here is false and had already been ruled inadmissible by the court in a judgment of 13 July 2011 (now made public) on the grounds that it did not go to any issue in dispute. WXY had had

no opportunity to deal with the allegations (which, where wrongdoing is alleged, are denied). Mr Burby's counsel made no attempt to seek to amend his case to rely on these allegations

14.13 Mr Burby's attempted blackmail of WXY had failed: she did not pay him off, she took him to court to protect herself and her rights. Mr Burby chose not to face justice: he put no evidence before the court; he gave no evidence himself, thus avoiding facing cross-examination. It is grossly misleading for him to complain of a breach of "natural justice", fairness or any other aspects of the right to a fair trial. Mr Burby's Supplemental Submission, designed to get the maximum publicity for his claims, was made in circumstances where he had avoided proper scrutiny of those claims and his so-called "evidence" in court.

(9) Paragraph [25]

14.14 Mr Burby complains that he was impeded in his attempts to obtain third party funding to support his defence. To put the matter shortly: the injunction was varied (largely in terms to which the Claimant had already consented) to permit a limited, and legitimate, pursuit of funding. What Mr Burby was not entitled or permitted to do was to seek to disseminate his allegations about WXY under the cover of seeking financial help. The procedure laid down in the injunction, as varied, is that which the court considered appropriate in the circumstances. There has been no attempt to interfere with Mr Burby's attempts to procure funding and we understand that he has succeeded in doing so. Mr Burby has deliberately misled the Committee.

(10) Paragraph [27]

14.15 The claim that Mr Burby could not report matters to the Solicitors Regulation Authority ("SRA") is nonsense. Firstly, the conduct of the solicitors was not a matter covered by the injunction. If there were anything in his complaints about breach of the rules or conduct in the proceedings, he could have raised them in court or (if within its jurisdiction) to the SRA. There was simply nothing to prevent him from doing so. Secondly, if there were any doubt about this, Mr Burby could have applied to court to seek a variation of the order to permit him to complain to the relevant authorities. A properly formulated request would not have been opposed: there was none. It is common for the courts, if appropriate, to allow disclosure to be made to the relevant investigating authority or regulatory body. The injunction was varied, with WXY's consent, to permit sharing of information with the Law Society. That variation did not relate to any complaint about her solicitors' conduct. There is no criticism of the conduct of WXY's solicitors in the Judgment. Mr Burby has deliberately misled the Committee.

(11) Paragraph [28]

14.16 Mr Burby makes a raft of wild, unfounded and inaccurate allegations, including allegations that are very serious indeed. It would require a long submission indeed to explain how and why each of these allegations is wrong. It is not necessary or proportionate to address them in turn but we repeat that his allegations of wrongdoing are denied. It is important to be clear that the court was not misled by our client or by us. Two allegations - at (s) and (x) - warrant a specific response, since they represent further serious misrepresentations (in the case of (s) about the effect of the interim injunction).

(i) With respect to (s), the injunction was varied to permit Mr Burby to share the protected information with potential witnesses “for the purposes of obtaining evidence which relates to the issues in dispute”. WXY was never averse to such a variation of the injunction and made this clear as soon as the question was raised. What Mr Burby was seeking was a wider variation of the injunction, in order to allow him to publish the protected information to individuals for other purposes. His application failed and he was refused permission to appeal at an oral hearing of the Court of Appeal. Had Mr Burby encountered potential witnesses who were, or claimed to be, restrained from assisting him by reason of a court order, he could have sought the court’s assistance.

(ii) With respect to (x), Mr Burby accuses our client and us of criminal conspiracy in relation to the allegation that our client had a sexual relationship with M. This allegation is false and there is no foundation for it, as Mr Burby knows: we refer to 14.6-14.8 above. Mr Burby has again seriously, and dishonestly, misled the Committee.

(12) Paragraph [30]

14.17. Mr Burby claims that he was prevented from reporting matters which should have been reported to police: this too is nonsense and again the Committee has been seriously misled. First, as mentioned above, a court order can be varied to permit disclosure to be made to a relevant investigative authority, such as the police. He did not apply to court. Secondly, Mr Burby learned of the “terrorism” allegation in 2006. Its source was ‘M’, whom, in Slade J’s view, Mr Burby ought to have known to be unreliable: Judgment [96]. He was present in October 2006 when X (as he is referred to in the Judgment) used financial inducements to encourage M to elaborate on the allegation. Mr Burby was free to report the allegation to the authorities at any stage between then and service of the interim injunction in September 2009. He appears not to have done so, no doubt because he recognised it was nonsense. Thirdly, Mr Burby did report allegations in relation to an allegation of murder to the police in Jersey (Special Branch) and, through an intermediary, to the police in London (Counter-Terrorism). He claimed that it gave him reason to fear for his own life. Slade J found that he had no grounds for such fears: Judgment [130]. In fact this was yet another attempt to bring about publications which would cause distress to WXY. Mr Burby reported a separate allegation to Jersey police in relation to an allegation that a threat had been made during the trial and used it as a basis for a further application to adjourn. In an ex tempore public judgment on 18 July 2011, refusing that application, Slade J noted that Mr Burby had failed to provide any documentary evidence of his report to the police, the content of the report, or that the police were in fact taking action on his complaint.

15. We have one further overarching concern about Mr Burby’s Supplemental Submission. At paragraph [3] he claims that his submission “has been worded in such a way so as not to undermine the integrity of the superinjunction”. We believe he had the opposite intention: the Supplemental Submission was designed and intended to undermine the integrity of the injunction against him (it was not, we repeat, a superinjunction). The submission does not name our client but contains a great deal of material which is obviously (and which is acknowledged by Mr Burby to be) private. We believe that Mr Burby made the Supplemental Submission in the hope or expectation that it would be published by the Committee and thereby bring about a situation in which the injunction would be rendered worthless. If there were any doubt as to Mr Burby’s true intentions, one need only look at the Note to the court dated 5 March 2012, in which he argues, self-servingly, that “the



injunction has been fully breached by the publication of my submissions, sent from Jersey, by the Parliamentary Committee and its subsequent republication and reporting ...” with the consequence that “the interim injunction (and, by extension, any permanent injunction) are rendered nugatory, pointless and wholly ineffectual”. Fortunately Slade J did not accept this argument (hearing on 6 March 2012). But the sad fact remains that the Committee has been seriously misled and has been used by Mr Burby as an instrument to subvert lawful orders of the court, and to further his unlawful campaign of harassment.

16. The Judgment sets out the true position in relation to Mr Burby’s conduct towards our client. The court’s conclusions speak for themselves: the Judgment should be read in full. The Supplemental Submission grossly misrepresents the circumstances of the claim, the court process and the conduct of our client and others (including our firm). Its publication causes distress to our client. The Judgment makes plain that Mr Burby sought to obtain money from our client through threats of publication (in common parlance: blackmail) and harassed her. The court found that our client’s rights are worth protecting. The findings of the court are some consolation to our client in the face of Mr Burby’s unwarranted attacks upon her.

## **Conclusion**

17. Of necessity, this submission has been prepared under considerable pressure of time. We have not dealt with every point made by Mr Burby, but this is not an admission that any point we have omitted has any force – they do not. Mr Burby has seriously misled the Committee.

18. We do not believe that Mr Burby is a credible source of “evidence” for this Committee in relation to our client or her proceedings against him. What he says in his Supplemental Submission should be disregarded entirely

19. Mr Burby’s conduct has been judged: the Judgment against him speaks for itself. He has infringed our client’s right to privacy, sought to blackmail her and has harassed her. The interim injunction was intended to protect our client. We hope that the final injunction will do so.

## **Annexe**

### **Order 6 March 2012: Schedule**

As referred to in paragraph 3 of the order, the terms of the restriction contained in the interim injunction to which the Defendants remain subject are as follows:-

[1.] Pursuant to CPR 39.2(4) the proceedings shall be anonymised and the Claimant shall only be referred to as WXY in all court documents and notices and in open court.

[...]

[6.] Except as set out below, until trial or further order, the First and Second Defendants whether by themselves, their directors, servants, agents, employees or howsoever, shall not, and the Third Defendant shall not in England and Wales:

- (a) Publish or disclose to any person or institution any of the information or allegations set out in Confidential Schedule 21;
- (b) Communicate to the Claimant (directly or indirectly) any threat to make such publication or disclosure as set out at (a) above, or any request for payment or other benefit in return for not doing so;
- (c) Otherwise harass the Claimant.

[7.] Nothing in this Order shall prevent a Defendant from making any communication to a legal advisor instructed in these proceedings for the purposes of obtaining legal advice in relation to these proceedings, provided the Defendant first gives that legal advisor a copy of this Order, or from disclosure to a Court pursuant to paragraph 8 of this Order below. The Defendants and each of them are restrained from giving a copy of this Order or any material served on them in connection with this Order or these proceedings to anyone else without prior permission from this Court.

[7A.] The Third Defendant may, with the prior written consent of the Claimant (such consent not to be unreasonably withheld or delayed), provide to any potential litigation funder or provider of after the event insurance who has requested the same from the Third Defendant, documents filed in and information relating to these proceedings, provided in each case that prior to providing such documents or information (but after the Claimant has given written consent to their provision), the Third Defendant shall send to the organisation or person who has made the request a copy of this Order and receipt of it is acknowledged.

[7B.] Griffin Law may disclose details of this case, in confidence, to their current professional indemnity insurers and any legal advisers instructed by themselves or their current professional indemnity insurers in relation to the Claimant's application for wasted costs, provided that, before disclosing such details, Griffin Law shall give the insurer or legal adviser a copy of this Order.

[7C.] For the purposes of obtaining evidence which relates to the issues in dispute in these proceedings (defined by reference to the parties' Statements of Case), the Defendants and/or their solicitors may provide to any potential witness documents filed in and information relating to these proceedings, provided in each case that prior to providing such documents or information the Defendants and/or their solicitors shall send to the potential witness a copy of this Order and the potential witness shall acknowledge in writing that s/he has read and understood the injunction and understands that s/he is bound by its terms to the same extent as the Defendants, save for the purpose of speaking to the Defendants and/or their solicitors as a potential witness.

[7D] The Defendants shall keep a copy of each such letter of acknowledgment, and a record of each potential witness to whom such information or documents have been provided, such copies and record to be produced to the trial judge if s/he so directs.

[8] For the avoidance of doubt, the restraints at paragraph 6(a) above are intended to and do cover disclosures to the public through the medium of court proceedings anywhere in the world (or in the case of the Third Defendant, in England and Wales), unless the court in question has previously given express permission (at a private hearing, on reasonable notice to the Claimant's solicitors, at which this Order is disclosed to that court) for the information or allegations to be put before it.

Note 1: the confidential schedule is attached to the order made on 9 September 2009 and is not annexed to this order. The contents of that schedule remain confidential.

*13 March 2012*